

## REMARKS

### I. Introduction

Claims 16, 24-32 and 47-90 were pending in the application.

Claims 16, 24-27, 31, 32, 47-51, 55-61, 65-71, 75-79 and 83-87 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gary, U.S. Patent No. 6,618,707 ("Gary"). Claims 28-30, 52-54, 62-64, 72-74, 80-82 and 88-90 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gary in view of May, U.S. Patent No. 6,421,653 ("May").

Claims 16, 25, 26, 57, 59, 60, 67, 69, 70, 83, 85 and 86 have been amended solely to expedite issuance of the present application. Claims 91-96 have been added. The claim amendments and the new claims are fully supported and justified by the application as originally filed. Claims 24, 27-32, 47-56, 58, 61-66, 68, 71-82, 84 and 87-90 have been cancelled without prejudice. Applicants reserve the right to pursue the subject matter of the cancelled claims in this or a continuing application.

The rejections are respectfully traversed.

### II. Summary of Personal Interview

Examiner Narayanswamy Subramanian, Examiner Hani Kazimi and the undersigned's colleague Joel Weiss, Reg. No. 44,398, conducted a personal interview on December 13, 2005. Mr. Weiss (hereinafter "applicants' representative") wishes to thank Examiner Subramanian and Examiner Kazimi (hereinafter "the Examiners") for the courtesies extended during the interview.

Details of the substance of the interview appear in more detail in the discussion below where appropriate. Generally, the Examiners and the applicants' representative discussed the "difference between applicants' invention and the cited prior art" (see Examiner Interview Summary of December 13, 2005). As noted in the Examiner Interview Summary, an agreement was not reached. However, applicants' representative suggested amending the claims to clarify "qualif[ying] for an incentive for making a market associated with the orders received" which is included in applicants' claims. More specifically, the amendments suggested included language found in, e.g., previously pending claims 24-32.\* The Examiners indicated that the suggested amendments would advance prosecution.

### III. Applicants' Reply to the Rejections Under § 103(a)

One embodiment of applicants' invention is directed to an electronic trading system. The electronic trading system preferably includes at least one computing workstation coupled to a central processing unit via a network. In such an arrangement, according to one embodiment of the invention, the central processing unit is configured to receive bid or offer orders from a trader. The central processing unit is also configured to receive a

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\* As described in further detail below, the clarifying amendments involve amending the claims to include the features of dependent claims in independent claims. As such, in order to ease examination of this application, applicants have limited the amendments to include the features of only dependent claims 24-26. The features of dependent claims 27-32 will likely be pursued in continuing patent applications.

trade command to hit or take at least one of the previously input bid or offer orders.

In each of independent claims 16, 25, 26, 57, 59, 60, 67, 69, 70, 83, 85 and 86, that are presently pending in the application, a determination is made whether the trader qualifies for an incentive based on his activities related to making a market associated with the orders received. If the trader qualifies for the incentive, for a period of time, the trader is provided with an exclusive trading opportunity related to a trade that occurs in response to the trade command.

As indicated above, applicants have amended the claims to clarify the activities of a trader related to making a market that qualify for an incentive. More specifically, applicants have amended independent claims 16, 57, 67 and 83 to include the feature of previously pending dependent claim 24, 58, 68, and 84, respectively. In these claims, the basis for determining if a trader qualifies for an incentive is the volume of the orders received from the trader. Applicants have also amended dependent claims 25, 26, 59, 60, 69, 70, 85 and 86 to be independent claims by including the features of previously pending independent claims 16, 57, 67 and 83. In these claims the bases for determining if a trader qualifies for an incentive are as follows: (1) the spread of the orders received from the trader (claims 25, 59, 69 and 85); and (2) the price of the orders received from the trader (claims 26, 60, 70 and 86).

According to this embodiment of the invention, an exclusive opportunity in trading may possess value because it is an exclusive option to buy or sell an item while the rest of the traders are forced to wait for the period of

time to expire in which the trader has the exclusive opportunity. Moreover, according to Merriam-Webster's Collegiate Dictionary, Tenth Edition, 2001, "exclusive" means:

- 1 a : excluding or having power to exclude . . .
- 2 a : excluding others from participation.

Looking more closely to Merriam-Webster's Collegiate Dictionary, "exclude" means:

- 1 a : to prevent or restrict the entrance of    b : to bar from participation, consideration, or inclusion.

Based on the discussion of Gary that follows, applicants submit that it will be clear that Gary does not show or suggest providing an exclusive opportunity in trading in accordance with applicants' claims and the well-known definition of "exclusive."

Gary discusses an automated system for matching previously entered orders with incoming orders on an exchange for securities. In the portion of Gary cited by the Office Action, a distribution of an incoming order is discussed. The incoming order is filled first against public customer orders and then filled against professional orders. The distribution of the incoming order with respect to the professional orders is on a pro rata basis based on the size of the professional order. In particular, Gary discusses a situation wherein a specialist receives a relatively higher portion of the pro rata order volume seemingly in response to the specialists' assuming responsibilities toward maintaining an orderly market. See column 4, line 55 to column 5, line 3.

The portion of the pro rata share received by the specialist is discussed in detail in the portion of text corresponding to FIGS. 4(a) and 4(b). Specifically, the "second example" discussed from column 16, line 13 until

column 16, line 67 is one example of the subject matter of Gary.

In the "second example" identified above, the following scenario is described. The offer side of the trading book is characterized in part by a public customer offer of 10 contracts at a price of  $3\frac{1}{2}$ , a primary market maker (i.e., specialist) offer for 20 contracts at  $3\frac{1}{2}$ , and a professional trader offer for 5 contracts at  $3\frac{1}{2}$ . Thereafter, an order to buy 30 contracts at  $3\frac{1}{2}$  is sent to the bid matching process. The bid matching process 34 completes step S168 shown in FIG. 4(a) and matches 10 contracts with the public customer order to sell 10 contracts at  $3\frac{1}{2}$  because public customer orders are matched first. See column 15, lines 19 to 22. Then the bid matching process determines that there are 20 contracts of the incoming order remaining.

Once the public customer order is filled, a remaining portion of the buy order is left to be matched. In order to match the remaining portion of the buy order with the remaining offers, a predetermined number is established called the primary market maker ("PMM") small order preference size. If the size of the original order is less than the PMM small order preference size, then the PMM will trade for the remaining portion of the buy order, if it can supply the order. If the size of the original order is greater than the PMM small order preference size, then the remaining contracts are traded according to an algorithm. See column 15, lines 22-31. In the "second example," after the public customer orders are matched, the bid matching process then determines that the original size of the incoming order was greater than the PMM small order preference size (which was assumed to be 5), thereby

allowing the remaining 20 contracts to be traded according to the allocation algorithm as illustrated in FIG. 4(b). See column 16, lines 13 to 26.

According to this example, a determination is made that there is one professional trader along with the PMM with offers at the best offer price. The remaining incoming order of 20 contracts is allocated such that the PMM receives the greater of 60% of the order or the percentage of the PMM's order with respect to the entire outstanding order. According to this formula, in this particular example, the PMM is entitled to trade 16 of the remaining contracts because the PMM has 80% (20 of the 25) of the offered contracts at the best price.

Applicants have set forth above a detailed description of one example of Gary in order to clearly differentiate Gary from applicants' claims. Based on the aforementioned example, it is clear that Gary does not show or suggest providing, for a period of time, an exclusive opportunity in trading. In fact, the entire disclosure of Gary is directed to many examples of embodiments of algorithms for allocating portions of available contracts among participants on one side of a trade.

As mentioned above, in one embodiment of applicants' invention, an exclusive opportunity allows a trader to exclude other traders from trading. Merriam-Webster's Collegiate Dictionary's definition of "exclusive" shows that this exclusive opportunity is a power that the trader possesses to prevent or restrict other traders from participation. The other traders are therefore forced to wait for the period of time to expire in which the trader has this exclusive opportunity. Gary, on the other hand, does not show or suggest participants having exclusive

rights to trade and thus being able to prevent or restrict others from trading for a period of time. Rather, the contracts are merely divided among the participants. Certain participants are allocated more or less of a pro rata share of the contracts depending on the status of the participants. Nevertheless, no participant is given exclusivity to trade the contracts for any period of time. Although a participant, such as a PMM, may have trading priority in certain circumstances, in Gary, no participant has the power to prevent other participants from trading. In fact, by the nature of the contracts being allocated among the participants, no participant can be given an exclusive opportunity because other participants trade contracts based on their allocated pro rata share of the contracts. Thus, participants are not being excluded (i.e., prevented) from trading contracts based on another participant possessing an exclusive opportunity, as is required by applicants' claims. Rather, participants in Gary are also able to participate in the trade.

Thus, because each of independent claims 16, 25, 26, 57, 59, 60, 67, 69, 70, 83, 85 and 86 require "for a period of time, [providing] the trader with an exclusive opportunity," applicant respectfully requests that the rejection under 35 U.S.C. § 103(a) be withdrawn.

(If, on the other hand, a subsequent Office Action issues maintaining the rejection, applicants respectfully request that the Office Action provide its interpretation of the word "exclusive," and the basis for replying upon its interpretation, in rejecting applicants' claims. In particular, applicants would appreciate knowing if the Office Action's interpretation of "exclusive" is based on the ordinary meaning of the word (e.g., as found

in a dictionary) or from applicants' specification, and would appreciate a specific citation to the Office Action's interpretation.)

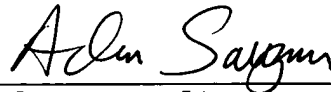
IV. Dependent Claims

Dependent claims 91-96 are dependent from at least one of allowable independent claims 16, 25, 26, 67, 69 and 70 are allowable at least because independent claims 16, 25, 26, 67, 69 and 70 are allowable

V. Conclusion

The foregoing demonstrates that applicants' claims 16, 25, 26, 57, 59, 60, 67, 69, 70, 83, 85, 86 and 91-96 are patentable. This application is therefore in condition for allowance. Reconsideration and allowance of this application are respectfully requested.

Respectfully submitted,



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